Calendar No. 82

101ST CONGRESS *1st Session*	SENATE	REPORT 101-44

AMTRAK AUTHORIZATION

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

MINORITY VIEWS

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 462

JUNE 6 (legislative day, JANUARY 3), 1989.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
29-010 WASHINGTON : 1989

S263-9

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AMTRAK AUTHORIZATION

JUNE 6 (legislative day, JANUARY 3), 1989.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 462]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 462) to amend the Rail Passenger Service Act to authorize appropriations for the National Railroad Passenger Corporation, and for other purposes, having considered the same, reports favorable thereon with an amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The bill, as reported, would reauthorize funding for the National Railroad Passenger Corporation (Amtrak) for three years, in the sum of $630 million for fiscal year (FY) 1989, $656 million for FY 1990, $684 million for FY 1991, and $712 million for FY 1992. Also, the bill would amend the Railroad Unemployment Insurance Act (RUIA) to allow Amtrak to take immediate advantage of new rules for paying into the Railroad Unemployment trust account. In addition, the bill would prohibit railroad and motor carrier employees who perform duties in more than one State from being subject to State income taxes in states other than the employee's State or subdivision of residence. Finally, the bill would exempt Amtrak, commuter railroads, and freight railroads from the award of punitive damages in cases involving passenger injuries.

Background and Needs

CREATION, OPERATION, AND FUNDING

In 1970, the Railroad Passenger Service Act was enacted creating Amtrak. Its purpose was to free the rail freight industry from the economic burden of providing ongoing passenger services, and to ensure that modern, efficient, intercity railroad passenger service would continue to be a part of the Nation's transportation system. Since that time, Amtrak has received Federal funding to help cover its operating, capital, and labor protection costs.

Funding for Amtrak was most recently authorized in the consolidated Omnibus Budget Reconciliation Act of 1985, for FY 1986 through 1988. For budgetary reasons, actual appropriations for Amtrak have not matched those authorized for the corporation. The authorized spending level for Amtrak for FY 1988 was $630.3 million, whereas the actual appropriation level for Amtrak approved in the Continuing Resolution for FY 1988 was $580.8 million, a reduction from the $602 million appropriated for Amtrak in FY 1987. In FY 1989, $584 million was appropriated for Amtrak.

Amtrak has improved its financial and ridership performance over the last several years. Its revenue-to-cost ratio has increased from 56 percent in FY 1984 to 69 percent in FY 1988. A record $1,106.7 million in revenue was generated in FY 1988, which represents an increase of 14 percent over the FY 1987 level and an 81 percent increase since FY 1981.

Over 21.5 million intercity passengers traveled by Amtrak last year, and an additional 15.4 million commuters rode on trains operated by Amtrak under contract with local transportation authorities. With respect to service, Amtrak's on-time performance decreased from 80 percent in FY 1984 to 71 percent in FY 1988.

Amtrak's significant financial improvement during the past several years can be attributed in large part to the excellent return on capital invested in Amtrak during the late 1970's and early 1980's. This capital enabled Amtrak to purchase new rolling stock and new facilities, which has resulted in a significant reduction in the cost of operating and maintaining equipment.

Since 1981, appropriations for capital investment have declined considerably. In FY 1981, Federal capital grants amounted to $221 million. In subsequent years, this Committee has authorized funding levels that would have allowed Amtrak to fund many of its capital projects, but appropriations to cover capital costs declined to as little as $2 million in FY 1987. As a result of increased revenues from operations, the total amount available for capital projects increased to $21.3 million in FY 1988. This amount represents a decline of some 91 percent in funds available for capital projects since FY 1981. For FY 1989, Amtrak stated that its total capital requirements were $311 million, but it requested only $72.6 million for such purposes in the face of Federal budgetary constraints. Only $28 million was appropriated.

Improved facilities and equipment are necessary to enable Amtrak to grow and to provide better, more reliable service at less cost. Neglecting to invest in such improvements will prevent Amtrak from replacing critical capital assets once they are con-

sumed. This is likely to result in reduced reliability and quality of Amtrak service, and also increased equipment maintenance and costs related to providing service. In fact, Amtrak's recent on-time performance decrease is due in part to overuse and undermaintenance of existing, insufficient rolling stock as it attempts to handle a growing passenger demand.

Amtrak believes that it has reached a critical juncture and can no longer absorb severe cuts in capital grants without undermining the quality of its services. Increased capital investment in Amtrak will protect and enhance the Federal investment in Amtrak's infrastructure and to enable futher reductions in the Federal cost of operating rail passenger service. The level of Federal assistance to Amtrak recommended by the Committee should be sufficient to fund Amtrak's most important capital projects and thereby enable Amtrak to continue its financial progress.

OTHER PROVISIONS

In addition to authorizing funding for Amtrak, the bill as reported contains three provisions affecting Amtrak and its employees. The first relates to legislation Congress passed at the close of the 100th Congress that converts the Railroad Unemployment Insurance system, over the next three years, to an experience-related program, under which premiums will be based on each individual railroad's unemployment record, as opposed to the average unemployment record for the whole railroad industry.

In that legislation, Congress elected to immediately relieve publicly-funded commuter railroads of the surpluses that they otherwise would continue to pay into the trust fund until the experience-rated system is fully phased-in. Under this provision, commuter railroads are required, for 1989 and 1990, to repay to the Railroad Unemployment trust account only the actual amount of unemployment and sickness benefits paid to their employees. This will result in a significant savings for the commuter railroads.

The Committee believes that Amtrak, also an entity that receives government funding, should be treated in the same manner. It should be noted that this provision will save Amtrak approximately $16 million during 1989 and 1990.

Another provision in this bill as reported relates to multi-State taxation of interstate transportation workers' incomes for work they perform outside their States of residence. This issue is especially important to workers in States without income taxes who are not able to obtain deductions within their States of residence for taxes they pay in other States. The Committee believes rail and motor carrier employees who perform duties in more than one State should not be subject to taxation in States or subdivisions in which they do not reside.

Finally, the bill as reported would remove a roadblock to initiation of commuter service between Northern Virginia and Washington, DC. An agreement has been reached between the Northern Virginia Transportation Commission (NVTC) and the Richmond, Fredericksburg and Potomac (RF&P) Railroad in Virginia and the Norfolk Southern Railroad to permit the operation of commuter trains over the tracks of those railroads. Amtrak has reached an

agreement with NVTC to operate the service between Northern Virginia and Washington. The only remaining impediment is the need for an agreement with Conrail to operate over one mile of its tracks across the Potomac River into Washington.

Though NVTC is willing to provide up to $200 million in insurance coverage for claims resulting from its commuter service, Conrail has insisted that it be fully indemnified for any such claims before it will agree to permit the operation of commuter service. However, a ruling by the U.S. District Court for the District of Columbia has called into question the ability of Amtrak to enter into indemnification agreements covering situations in which punitive damages might lie. Thus, based on this case, Conrail argues that any indemnification agreement, to be effective, necessitates legislation providing for such indemnifications.

The bill as reported would exempt Amtrak, commuter railroads, and freight railroads (in connection with operations conducted by or on behalf of Amtrak or the commuter railroads) from the award of punitive damages in cases involving passenger injuries. Amtrak believes this provision also will facilitate its renegotiation of contracts with freight railroads in future years.

Legislative History

On February 28, 1989, Senator Exon introduced S. 462, to amend the Rail Passenger Service Act to authorize appropriations for Amtrak. The bill is cosponsored by Senators Lautenberg, Simon, Adams, Kerry, Dodd, Mikulski, Kasten, Rockefeller, Jeffords, Conrad, Bradley, Biden, Pell, and Sarbanes.

The Surface Transportation Subcommittee held a hearing on April 6, 1989, to review the operations of Amtrak and consider reauthorization of appropriations for the corporation. During the hearing chaired by Senator Exon, the subcommittee heard testimony from the Federal Railroad Administration, Amtrak, the Railway Labor Executives' Association, and the National Association of Railroad Passengers.

On April 18, 1989, the Committee met in open executive session to consider S. 2320. Senator Exon offered two amendments. The first would extend to Amtrak the treatment accorded publicly-funded rail carriers under RUIA, and was approved without objection. The second, offered on behalf of Senator Bentsen, would prohibit dual State income taxation of rail and motor carrier employees, and was approved by voice vote. Senator Robb offered an amendment exempting Amtrak, commuter railroads and certain freight railroads from the award of punitive damages related to passenger injuries, which was adopted on a rollcall vote. During the executive session, members of the Committee, including Senator Robb, discussed restricting the scope of the punitive damages amendment during Senate floor consideration of this bill.

Summary of Major Provisions

This legislation seeks to reauthorize Amtrak at levels which will allow it to continue operating its present system. These levels should ensure funding necessary to enable Amtrak to make capital improvements. This bill does not reflect the Administration's oppo-

sition to reauthorizing funds for Amtrak above the level appropriated for FY 1989.

As reported, S. 462 would:

(1) reauthorize funding for Amtrak in the sum of $630 million for FY 1989, $656 million for FY 1990, $684 million for FY 1991, and $712 million for FY 1992, and

(2) treat Amtrak as a publicly-funded rail carrier under RUIA to allow Amtrak in 1989 and 1990 to pay into the Railroad Unemployment trust account the actual amount of unemployment and sickness benefits paid to their employees;

(3) prohibit rail and motor carrier employees who perform duties in more than one State from being subject to State income taxes in States other than the employee's State or subdivision of residence; and

(4) exempt Amtrak, commuter railroads, and certain freight railroads from the award of punitive damages in cases involving passenger injuries.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 10, 1989.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 462, a bill to authorize appropriations for the National Railroad Passenger Corporation, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 462.

2. Bill title: A bill to authorize appropriations for the National Railroad Passenger Corporation, and for other purposes.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science and Transportation, April 18, 1989.

4. Bill purpose: S. 462 would authorize appropriations for grants to the National Railroad Passenger Corporation (Amtrak) for fiscal years 1989 through 1992. The bill authorizes $630 million for 1989 and increasing amounts for the following years up to $712 million for 1992. The existing appropriation for 1989 for grants to Amtrak is $583 million.

In addition, S. 462 would:

Amend the Railroad Unemployment Insurance Act to treat Amtrak as a publicly funded rail carrier for purposes of determining unemployment insurance tax liability;

Protect certain rail and motor carrier employees from the income tax laws of states other than the one in which they reside; and

Extend protection from punitive damages to Amtrak, to publicly-funded commuter transportation authorities, and to private railroads in connection with their participation in commuter rail operations.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993	1994
Authorizations:						
Authorization level	630	656	684	712		
Less: Existing appropriation	584					
Net additional authorization	46	656	684	712		
Estimated outlays	41	593	651	708	70	35
Estimated net revenues	−3	−5	−2	2	3	4

The costs of this bill fall within budget function 400.

Basis of estimate: The CBO assumed that S. 462 will be enacted in this fiscal year and that the additional amounts authorized for fiscal year 1989 would be provided in a supplemental appropriation before the end of this year. We assumed that the amounts authorized for the following fiscal years would be appropriated prior to the start of those years.

Section 2 of S. 462 would amend the Railroad Unemployment Insurance Act to treat Amtrak as a publicly funded rail carrier for purposes of determining unemployment insurance tax liability. As such, Amtrak would reimburse the Railroad Unemployment Insurance trust fund account for actual unemployment insurance benefits paid to its employees in calendar years 1989 and 1990, instead of paying the 8 percent unemployment insurance tax required under current law. Because some of the calendar year 1990 payments will be made in fiscal year 1991, the reduction in Amtrak's tax payments would affect three fiscal years, 1989 through 1991. Reducing Amtrak's payments during these years would reduce future trust fund balances; therefore, the tax rates paid by all railroads would have to be increased after 1990, resulting in higher net revenues beginning in fiscal year 1992.

Section 3 of the bill restricting states from taxing the income of nonresident transportation workers could also have some impact on federal revenues, because some taxpayers are able to deduct state income taxes from gross income in determining their federal income tax liabilities. If state income taxes are reduced by this provision, thereby reducing deductions for federal income taxes, federal income taxes could go up. However, states might choose to replace this revenue source with higher income taxes or other taxes. Because we cannot predict state government behavior, and because

the necessary data are unavailable, it is impossible to estimate the effect of this provision on federal revenues.

6. Estimated cost to State and local governments: As discussed above, this bill could have an impact on state income tax collections, as states could no longer levy income taxes on covered nonresident workers whose jobs carry them across state lines. CBO cannot determine how this change would affect particular states, because of the lack of data on taxes currently collected from these workers, and because the taxes paid in one state usually serve as a deduction in another state. In general, state income tax collections would be reduced in total only when the worker's home state does not have an income tax or has a significantly lower tax rate. Otherwise, a loss of revenue in one state could be offset by a gain in another.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Marjorie Miller and Maureen Griffin.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

This legislation provides an authorization of appropriations for FY 1989, 1990, 1991, and 1992 to enable Amtrak to continue the current level of operation of rail passenger service. The Committee estimates that with the inclusion of commuter services, Amtrak-operated trains carried approximately 36.9 million passengers in FY 1988. Also in FY 1988, there were approximately 23,000 persons employed by Amtrak.

Under the section prohibiting dual State taxation, the maximum number of persons who could be affected would be the universe of all rail and motor carrier employees in the United States, estimated to be 120,000 and 3 million individuals, respectively. The Committee believes, however, that the number of rail employees and operators of commercial motor vehicles actually burdened by dual taxation is a number much smaller than the universe of these workers.

Due to the speculative nature of punitive damage claims, it is difficult to estimate how many people would file claims in a given year. However, the average number of punitive damage claims filed each year against Amtrak between 1984 and 1987 has been estimated to be 90.

ECONOMIC IMPACT

The bill authorizes appropriations of $630 million for FY 1989, $656 million for FY 1990, $684 million for FY 1991, and $712 million for FY 1992. These funding levels are consistent with the most recent authorization level and take into account projected inflation over the period of the reauthorization.

Allowing Amtrak, in 1989 and 1990, to pay into the Railroad Unemployment fund the actual amount of unemployment and sickness benefits paid to their employees, rather than an amount based on the average unemployment record for the entire railroad industry, will result in a decrease of approximately $16 million paid into the system by Amtrak. There is currently a surplus of more than $180 million in the Railroad Unemployment Fund.

At the present time, there are approximately three or four States taxing the income of non-resident truck and bus drivers and railroad workers. This legislation will have an impact on the ability of these States to obtain this source of revenue.

As a result of the speculative nature of punitive damage awards, it is difficult to estimate with a substantial degree of accuracy how much will be saved by Amtrak, the publicly-funded commuter transportation authorities, and the railroads by the elimination of punitive damage awards related to providing passenger services. Although no punitive damages have been awarded against Amtrak over the past three years, the company estimates it will save approximately $10 million annually from the downward effect the removal of this claim will have on settlements.

PRIVACY

This legislation will not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

This bill should reduce paperwork for those rail and motor carrier employees subject to dual taxation as well as those States imposing taxes on these non-residents. There should be no other change in paperwork requirements.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—AUTHORIZATION FOR APPROPRIATIONS

This section would amend section 601(b)(2) of the Rail Passenger Service Act to authorize funding for Amtrak of $630 million in FY 1989, $656 million in FY 1990, $684 million in FY 1991, and $712 million for FY 1992.

The FY 1989 authorization level was requested by Amtrak and represents a $49 million funding increase over the FY 1988 appropriation level. The funding authorization figures for FY 1990, 1991, and 1992, respectively, take into account projected inflation of approximately four percent in each of those years and would allow for some needed capital improvements during the same period of time.

SECTION 2.—RAILROAD UNEMPLOYMENT INSURANCE ACT

This section provides that Amtrak will be treated as a publicly-funded rail carrier under RUIA in 1989 and 1990. During these years Amtrak will only have to pay into the Railroad Unemployment trust account the actual amount of unemployment and short-term sickness benefits paid to its employees.

Congress passed legislation at the close of the 100th Congress that converts the Railroad Unemployment Insurance system over the next three years to an experience-rated program, under which premiums will be based on each individual railroad's employment record, as opposed to the average unemployment record for the entire railroad industry.

In the case of publicly-funded commuter railroads, however, Congress elected to relieve them immediately of the surpluses that they otherwise would continue to pay into the trust fund until the experience-rated system is fully phased-in. Under last year's provision, commuter railroads are required for 1989 and 1990 to repay to the Railroad Unemployment trust account only the actual amount of unemployment and sickness benefits paid to their employees. This section extends this treatment to Amtrak.

SECTION 3.—STATE INCOME TAXATION OF RAIL AND MOTOR CARRIER EMPLOYEES

Section 3 prohibits rail and motor carrier employees who perform duties in more than one State from being subject to taxation in any State or subdivision other than the employee's State or subdivision of residence. This section amends title 49 of the U.S. Code and applies to employees of rail and motor carriers subject to the jurisdiction of the Interstate Commerce Commission.

SECTION 4.—PUNITIVE DAMAGES

This section amends the Rail Passenger Service Act and exempts Amtrak, publicly-funded commuter transportation authorities, and railroads (in connection with operations conducted by or on behalf of Amtrak or such a publicly-funded authority) from the award of punitive damages in any civil action commenced on or after the date of enactment of this section.

The award of punitive damages in passenger train injury claim suits is in addition to compensatory damages. The recovery of punitive damages against the United States is prohibited under the Federal Tort Claims Act and in some States is prohibited against publicly-funded commuter authorities.

Rollcall Votes in Committee

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 462:

At the beginning of the debate on S. 462, the Committee approved without objection an amendment offered by Senator Exon that would enable Amtrak to take immediate advantage of new rules for paying into the Railroad Unemployment trust account. Next an amendment offered by Senator Exon on behalf of Senator Bentsen concerning dual State taxation of railroad and motor carrier employees was approved by voice vote. Then Senator Kasten offered an amendment that would allow Amtrak, during a three-year trial period, to settle employee injury claims under State workers' compensation laws rather than under the Federal Employers' Liability Act. On a rollcall vote of 10 yeas and 10 nays as follows, the Kasten amendment was defeated:

YEAS—10	NAYS—10
Mr. Robb	Mr. Hollings
Mr. Danforth	Mr. Inouye[1]
Mr. Packwood[1]	Mr. Ford
Mr. Pressler[1]	Mr. Exon
Mr. Stevens[1]	Mr. Gore[1]
Mr. Kasten	Mr. Rockefeller
Mr. McCain[1]	Mr. Bentsen[1]
Mr. Burns	Mr. Kerry
Mr. Gorton	Mr. Breaux[1]
Mr. Lott	Mr. Bryan

[1] By proxy.

Senator Robb offered an amendment to S. 462 that would relieve Amtrak, publicly-funded commuter transportation authorities, and railroads of liability for punitive damages with respect to operations conducted by or on behalf of Amtrak or such commuter transportation authorities. On a rollcall vote of 8 yeas and 7 nays as follows, the Robb amendment was adopted:

YEAS—8	NAYS—7
Mr. Kerry	Mr. Hollings
Mr. Robb	Mr. Inouye[1]
Mr. Danforth	Mr. Ford
Mr. Pressler[1]	Mr. Exon
Mr. Kasten	Mr. Rockefeller
Mr. Burns	Mr. Bentsen[1]
Mr. Gorton	Mr. Bryan
Mr. Lott	

[1] By proxy.

S. 462, as amended, was then agreed to by voice vote.

MINORITY VIEWS OF MR. HOLLINGS

PUNITIVE DAMAGES AMENDMENT

The amendment to the Rail Passenger Service Act to exempt the National Railroad Passenger Corporation (Amtrak), publicly-funded commuter transportation authorities, and railroads from the award of punitive damages in cases involving passenger injuries is ill-advised as a policy matter and substantively flawed. This amendment would preempt many years of common law development in the State courts and legislatures, and without sound statistical data or evidence to support a crisis in the area of passenger-related punitive damage awards against either Amtrak, publicly-funded commuter authorities, or railroads. For the reasons set out below, I continue to believe that this amendment is unwise and should not be enacted.

The purpose behind punitive damages is not only to punish egregious wrongdoers, but also to deter future reckless conduct and provide an incentive to maintain safety. Since we do not normally lock up corporate officers, the threat of a punitive damage award is our best insurance against reckless, willful, or grossly negligent acts.

While we are all aware of cases in which juries have awarded millions of dollars in damages to injured plaintiffs, the studies to date show that punitive damage awards remain infrequent, and that damages awarded by juries are often substantially reduced. The truth of the matter is that if actual damages are not sustained by the evidence they are lowered at the insistence of the judges themselves who would otherwise order a new trial. In my own home State of South Carolina, a trial judge can nullify a punitive damage award entirely, but by then it would have served as a warning and an incentive to rectify whatever misconduct led to the initial imposition of punitive damages. I continue to believe in the retention of punitive damages as a policy matter.

Turning to the specifics of this amendment, supporters of the amendment argue that it is necessary to remove the only remaining roadblock to initiation of commuter service between Northern Virginia and Washington, DC. I am sympathetic to the need that exists for implementation of this service. I also understand that the only missing link to establishment of this service is the lack of an agreement with Conrail to operate over one mile of its tracks across the Potomac River into Washington. This impasse exists because Conrail has insisted that it be fully indemnified for any claims resulting from this commuter service, even though the Northern Virginia Transportation Commission (NVTC) is willing to provide up to $200 million in insurance coverage for claims resulting from its commuter service.

This situation has reached an even more fevered pitch primarily because the U.S. District Court for the District of Columbia recent-

ly held that it violated public policy to require Amtrak to indemnify Conrail for passenger claims resulting from Conrail's own gross negligence in causing the Chase, Maryland accident, that involved drug use by the Conrail engineer and brakeman and resulted in 16 deaths and numerous injuries. It is my understanding that under this ruling, NVTC could not indemnify Conrail by agreement for claims resulting from Conrail's gross negligence. Thus, Conrail seeks legislative indemnification.

The specifics of this situation, however, do not dictate a reversal in sound public policy to approve a legislative exemption from punitive damages. At one time, Conrail was attempting to have the court ruling legislatively reversed. In that connection, Amtrak provided the Committee staff with a document in which it stated: "We believe the enactment of Conrail's proposal would remove an important safety incentive and would undermine the safety of rail passenger operations. Indeed, the lesson from the Chase accident was that additional steps must be taken by the railroads to prevent employees from acting irresponsibly and in utter disregard of the safety consequences of their actions." Although in this same document Amtrak argues in favor of prohibiting punitive damages, I would submit that in its own statement Amtrak has made a compelling argument for the retention of punitive damages.

Additionally, I submitted a question regarding punitive damages to Amtrak after the hearing on April 6, 1989, before the Subcommittee on Surface Transportation of the Commerce, Science, and Transportation Committee on the reauthorization of Amtrak. I asked for background information on specific punitive damage awards against Amtrak in the last three years. However, there have been none. In essence, this amendment is being sought to address the mere threat of punitive damages.

Furthermore, the amendment as drafted is overly broad to deal with the specific problem of Northern Virginia commuter rail service. In many States, commuter authorities have been exempted from punitive damages by State law or case law. In some of these cases the commuter authority is exempt in its primary State of operation, but not in a second State (i.e. New Jersey Transit is exempt in New Jersey but not in New York). I am uncomfortable dictating to any State what the bounds of its remedies under this type of civil action proceeding should be.

In closing, I reaffirm my belief that this legislation represents a drastic step away from reliance on carefully-evolved State case law. It is being considered without any compelling evidence about the nature of Amtrak's, the publicly-funded commuter transportation authorities', or the railroads' punitive damages liability costs that would indicate that this industry has paid more than the amount reasonably required by its share of responsibility for accidents. Furthermore, the fact that the industry clearly expects to save a significant amount of money in settling injury or wrongful death cases as a result of this amendment should raise questions among all those interested in the fair treatment of rail passengers. I urge my colleagues to reject this untoward effort.

ERNEST F. HOLLINGS.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

RAIL PASSENGER SERVICE ACT

Section 601 of that Act

SEC. 601. AUTHORIZATION OF APPROPRIATIONS.

(a) * * *

(b)(1) * * *

(2) There are authorized to be appropriated to the Secretary for the benefit of the Corporation—

(A) through (B) * * *

(C) not to exceed $600,000,000 for the fiscal year ending September 30, 1986;

(D) not to exceed $606,100,000 for the fiscal year ending September 30, 1987; [and]

(E) not to exceed $630,300,000 for the fiscal year ending September 30, 1988[.];

(F) not to exceed $630,000,000 for the fiscal year ending September 30, 1989;

(G) not to exceed $656,000,000 for the fiscal year ending September 30, 1990;

(H) not to exceed $684,000,000 for the fiscal year ending September 30, 1991; and

(I) not to exceed $712,000,000 for the fiscal year ending September 30, 1992.

(3) * * *

(c) through (e) * * *

New Title XI of that Act

TITLE XI—LIMITATIONS ON LIABILITY

SEC. 1101. PUNITIVE DAMAGES.

Notwithstanding any other provision of law, punitive damages shall not be awarded against the Corporation in any civil action commenced on or after the date of enactment of this title, or against a publicly-funded commuter transportation authority or a railroad in connection with operations conducted by or on behalf of the Corporation or by or on behalf of such transportation authority.

RAILROAD UNEMPLOYMENT INSURANCE ACT

Section 8 of that Act

CONTRIBUTION

SEC. 8. (a) EMPLOYER CONTRIBUTION.—
(1) IN GENERAL.—
(A) * * *
(B) TRANSITIONAL RULE.—
(i) through (v) * * *
(vi) SPECIAL TRANSITION RULE FOR PUBLIC COMMUTER RAILROADS.—With respect to each of calendar years 1989 and 1990, the contribution of *the National Railroad Passenger Corporation and* an employer which on the date of the enactment of the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 is a publicly funded and publicly operated carrier providing rail commuter service shall be equal to the amount of benefits attributable to such carrier, plus an amount equal to 0.65 percent of the total compensation paid by that employer in that year on which that employer's contribution would be based under clause (i) if such employer's contribution were determined under that clause.
(C) through (D) * * *
(2) through (21) * * *
(b) through (k) * * *

TITLE 49, UNITED STATES CODE

Section 11504 of that Title

§ 11504. Withholding State and local income tax by certain carriers

[(a)(1) In this subsection, an employee is deemed to have earned more than 50 percent of pay in a State or subdivision of a State if the employee—

[(A) performs regularly assigned duties on a locomotive, car or other track-borne vehicle in at least 2 States and the mileage traveled in one State or subdivision of that State is more than 50 percent of the total mileage traveled by the employee while employed during the calendar year; or

[(B) is engaged principally in maintaining roadways, signals, communications, and structures or in operating motortrucks from railroad terminals in at least 2 States and the percent of the time worked by the employee in one State or subdivision of that State is more than 50 percent of the total time worked by the employee while employed during the calendar year.

[(2) A rail, express, or sleeping car carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title shall withhold from the pay of an employee referred to in paragraph (1) of this

subsection only income tax required to be withheld by the laws of a State, or subdivision of that State—

[(A) in which the employee earns more than 50 percent of the pay received by the employee from the carrier; or

[(B) that is the residence of the employee (as shown on the employment records of the carrier), if the employee did not earn in one State or subdivision more than 50 percent of the pay received by the employee from the carrier during the preceding calendar year.]

(a) No part of the compensation paid by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title to an employee who performs regularly assigned duties as such an employee on a railroad in more than one State shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.

[(b)(1) In this subsection—

[(A) "State" includes a State, territory, or possession of the United States, and the Commonwealth of Puertc Rico.

[(B) an employee is deemed to have earned more than 50 percent of pay in a State or subdivision of a State in which the mileage traveled by the employee in that State or subdivision is more than 50 percent of the total mileage traveled by the employee while employed during the calendar year.

[(2) A motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and a motor private carrier shall withhold from the pay of an employee having regularly assigned duties on a motor vehicle in at least 2 States, only income tax required to be withheld by the law of a State, or subdivision of that State—

[(A) in which the employee earns more than 50 percent of the pay received by the employee from the carrier; or

[(B) that is the residence of the employee (as shown on the employment records of the carrier), if the employee did not earn in one State or subdivision more than 50 percent of the pay received by the employee from the carrier during the preceding calendar year.]

(b) No part of the compensation paid by a motor carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title to an employee who performs regularly assigned duties as such an employee on a motor vehicle in 2 or more States shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.

(c) * * *

(d) A rail, express, sleeping car, motor, and motor private carrier withholding pay from an employee under subsection (a) or (b) of this section shall file income tax information returns and other reports only [with—

[(1) the State and subdivision of residence of the employee; and

[(2) the State and subdivision in which withholding of pay is required under subsection (a) or (b) of this section] *with the State and subdivision of residence of the employee.*

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